BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinion of the Circuit Court of Appeals Is Contrary to the Local Policy of Iowa As Appeared In Its Statutes and Court Decisions.

This case has once been before this Court on the question of jurisdiction over the subject matter of the District Court of the United States for the Southern District of Iowa under Section 57 of the Judicial Code. In an opinion filed January 5, 1942 this Court held that the District Court had jurisdiction and remanded the case to the Circuit Court of Appeals to decide what rights under the Iowa law, Iowa and its Receiver had to the securities and collection thereon and whether the decree entered by the District Court was kept within the appropriate limits. 314 U. S. 594, 62 S. C. 380, 86 L. Ed. 328.

After reargument the Circuit Court of Appeals held that the local policy of Iowa as to the rights of the Domiciliary Receiver of a foreign insurance company in securities deposited in Iowa was expressed by Section 8861-63 of the Insurance Laws of Iowa pertaining to domestic life insurance companies. (130 Fed. (2d) 643).

This action was not brought by a resident policyholder of the State of Iowa nor by a judgment creditor of the American Life Insurance Company resident of Iowa, claiming a lien upon the deposit in question. The action was brought by the Insurance Commissioner of the State of Iowa who was custodian of the deposit prior to the insolvency of the American Life Insurance Company, and subsequently Receiver of the deposit. As plaintiff he made no claim that he instituted this suit to protect citizens of the State of Iowa. He ignored the rights of 1707 policyholders who originated in the Michigan company, representing over $2,300,000 of insurance in force, who are residents of the State of Iowa. He claims that he is attempting to protect the rights of 4313 policyholders scat-

tered through 41 different states and several foreign countries, of whom 1535 are residents of the State of Iowa.

It is the contention of Petitioners that Sections 8861-63 of the Insurance Laws of Iowa, relied upon by the Circuit Court of Appeals, could not express the local policy of the State as to foreign insurance companies which fall under the provisions of Section 8652 of the Insurance Laws of Iowa (quoted in Facts) which provides that any deposit is "for the benefit of all the policyholders of such company." It appears, therefore, that the policy of Iowa, correctly interpreted, recognizes the doctrine that all policyholders of an insurance company shall share equally and there is no provision by which any group of policyholders shall have superior rights to any other group of policyholders, which is the result of the decision of the Circuit Court of Appeals.

Creditors resident of a state were recognized to have a preference by this Court in the case of *Clark v. Williard,* 292 U. S. 112, 78 L. Ed. 760, 294 U. S. 211, 79 L. Ed. 865. In that case, twice before this Court, although involving a surety company, the right of a resident creditor under a judgment obtained against the insurance company was recognized by local policy to have preferential rights. The decision of the Circuit Court of Appeals in the instant case applied a statute which had no relation to foreign life insurance companies such as the Michigan company. It relied upon decisions of the Supreme Court of Iowa which petitioners contend did not establish a doctrine of local policy such as was found by the Circuit Court of Appeals.

The leading case in the State of Iowa on the question of local policy is *Schloss vs. Metropolitan Surety Company,* 149 Iowa 382, 128 N. W. 384. In that case where a surety company was involved, a suit had been instituted by a resident of the State of Iowa prior to the decree of dissolution because of the insolvency of the company. The plaintiff sought to enforce a judgment obtained against assets found within the State of Iowa. It was held that title to the assets was in the official liqui-

dator, but subordinate to the lien of the plaintiff who was an attaching creditor and the assets were not subject to a superior claim of the domiciliary receiver seeking to remove the assets found in the State of Iowa before satisfying the claim of the attaching creditor.

The local policy of the State of Iowa as expressed by the *Schloss* case falls far short of establishing a right in the Iowa Receiver in the case at bar to retain, liquidate and administer the assets in question, or to permit him the relief prayed for in his complaint.

More recently, and again involving a surety company, the local policy of the State of Iowa as to a resident *attaching* creditor has been expressed in the case of *Watts vs. Southern Surety Company,* (1933) 216 Iowa 150, 248 N. W. 347.

It is submitted that these decisions, one as to judgment creditor and one as to an attaching creditor, do not establish a local policy of the State of Iowa as to policyholders of a life insurance company who are not judgment creditors or attachment creditors. On the contrary, as expressed in Section 8652. Insurance Laws of the State of Iowa, the principle that equality is equity is recognized in Iowa as in Michigan. The policy of Iowa extends only so far as to protect residents of the State on contract claims arising within the State of Iowa against a foreign corporation, even though in receivership. This policy does not permit appellee to retain, liquidate and administer the assets in question, nor has this policy ever been extended to life insurance companies in Iowa or in any other state.

Under the laws of Michigan deposits made by domestic companies, and the American Life Insurance Company was a domestic company, were established for the benefit of all the policyholders. Sections 12390-91, Compiled Laws of Michigan, 1929 (Sections 9326 and 9331, Compiled Laws of Michigan, 1915) and Section 12377, Compiled Laws of Michigan, 1929 (see Facts for quotations).

The cases cited do not involve life insurance companies. The claim of a policyholder for the cash value of his policy is quite a different sort of claim than that arising by contract. This principle has been recognized in *Fry v. Charter Oak Life Insurance Company*, 31 Fed. 197, where a distinction is drawn between the rights of a general creditor of an insolvent life insurance company and the claim of a policyholder. See also *Parsons vs. Charter Oak Life Ins. Co.*, 31 Fed. 305. A policyholder of a life insurance company consents to be bound by the laws of the state of the company. Creditors other than policyholders have never made such election, nor had an opportunity to do so. Consequently, life policyholders have always been placed in a preferred position over general creditors. Deposits by life insurance companies are for the exclusive benefit of policy creditors. *Palmer vs. State Life of Illinois*, 296 Ill. App. 985, 15 N. E. (2d) 985. This principle is in accordance with the provisions of the statutes of both Michigan and Iowa under which such deposits are for the benefit of all of the policyholders regardless of state lines. But policyholders in one state have no preference over those in another state. *Taylor vs. Life Association of America*, 13 Fed. 493.

In the case at bar, it is clear that there is not involved a claim by citizens of Iowa, as such, against assets located in that state. The policyholders whom the Iowa Receiver assumes to represent made their election in 1921 to accept the Michigan company, and in 1939 to accept the American United Life Insurance Company for their insurance protection. After such election was made the Iowa company was dissolved. Now through the process of receivership the Michigan company has likewise come to an end. All of the policyholders who have not accepted the insurance protection of the American United Life Insurance Company have recognized the jurisdiction of the Michigan Court by filing their claims with the Receiver in that Court for action by the Court and in no instance has a policyholder sought the protection of the Iowa Courts as to any claim made by him or on his behalf.

The Circuit Court of Appeals in its decision as to the local policy of the State of Iowa and as to the rights of the Receiver in the State of Iowa went far beyond any doctrine of local policy established by the statutory law of Iowa or the decisions of its Supreme Court. The doctrine of local policy permits a state to protect its citizens by granting them liens on assets within the state superior to the rights of a foreign receiver or liquidator. This doctrine has never been extended to protect residents of foreign states, much less of foreign countries. The State of Iowa, either in its statutes or in the decisions of its Supreme Court, has not attempted to protect any but its own citizens. In the case at bar no Iowa citizen or resident holds a judgment or an attachment against the assets in issue, nor is any claim asserted against those assets. The claims of all Iowa residents have been settled by the domiciliary receiver.

II.

The Decision of the Circuit Court of Appeals Decided An Important Question of Local Law in a Way Probably Untenable or in Conflict With the Weight of Authority.

(a) The record discloses by stipulation of the parties that at the time of the reinsurance of the Michigan Company by the American United Life Insurance Company, there were 4,313 policyholders who originated with the American Life Insurance Company of Des Moines, distributed among 41 different states as well as Canada, the Philippine Islands, Hawaii, Porto Rico, and South America. Of these policyholders 1,535 were residents of the State of Iowa. All of the policyholders who originated in the American Life of Des Moines, except 81, accepted the reinsurance agreement entered into with the American United Life Insurance Company and the 81 policyholders mentioned (subsequently reduced to 65 by withdrawal of claims) filed claims with the Michigan Receiver for submission to the Michigan court. (Record pages 62). It has been accepted without question that no affirmative action is necessary to create a liability un-

der a reinsurance agreement and that the acceptance of an assumption agreement duly issued by a reinsuring company is presumed by inaction on the part of the insured.

Gilfillan v. Union Canal Co., 109 U. S. 401, 3 S. Ct. 304.

The record discloses that all of those policyholders of the original Des Moines group who did not dissent following their acceptance of the reinsurance by the American United Life Insurance Company have paid premiums to the American United since the date of the reinsurance agreement, November 17, 1939. (R. 64). The dissenting policyholders, numbering 81 of the original 4,313, (less than two percent) expressed their dissent by filing claims with the Receiver for submission to the Michigan court, thereby recognizing the jurisdiction of the Michigan court for the purpose of determining any rights which they might have. The facts, as disclosed by the stipulation, demonstrate that all of the policyholders in the group for whom the plaintiff would appear to speak have accepted the jurisdiction of the Michigan court in one or the other of the two available methods; namely, either accepting reinsurance provided by the Michigan court or by filing claims. It is further to be noted that the only policyholders for whom the plaintiff has sought to speak are those remaining from the original American Life Insurance Company of Des Moines. The Des Moines Company was reinsured by the Michigan Company by three reinsurance contracts the last dated October 24, 1923 (Record page 56) and all under the provisions of Iowa law covering reinsurance. Thereafter and to the present date no Iowa Company exists. The original policyholders of the nonexistent Iowa Company after its dissolution looked only to the Michigan Company for any insurance protection. To the Michigan Company for almost twenty years they paid their premiums and until its insolvency death claims were duly filed and paid. The Michigan Company occupied the position of the original Iowa Company in every sense and by novation the Iowa Com-

pany policyholders became Michigan Company policyholders. *Hobbs v. Accidental Life Insurance Co.*, 87 Fed. (2d) 380 (Certiorari denied 305 U. S. 603).

Following the insolvency of the Michigan Company and after its reinsurance by the American United, the surviving members of the original Iowa group then ceased to look to the Michigan Company for insurance protection but thereafter looked only to the American United for insurance protection excepting as to those few persons who dissented from the tendered reinsurance and accepted the jurisdiction of the Michigan court by filing their claims in that court. In regular course the Michigan company came to an end (Record page 597) and again by novation the same group became policyholders of the American United.

A recognition of the facts requires a recognition of the legal liability of the respective parties to the insurance. Solely responsible for the insurance of the survivors of the Iowa group (subject only to Section 36 of the Reinsurance Agreement, (R. 149), is the existing insurer; namely, the American United Life Insurance Company, the successor by reinsurance of the rights of the Michigan Company in 1939 which in turn has succeeded to the rights of the Iowa Company by the Reinsurance Agreements executed in 1921, 1922 and 1923. Subject to such changes, if any, as might ultimately be worked out in the course of the litigation between the parties to the case at Bar the Reinsurance Agreement between the Insurance Company and the American United represents the only basis of liability to the surviving policyholders of the Iowa Company.

(b) In determining that June 17, 1938 was a controlling date, the court failed to take into consideration the fact that thereafter and prior to the time that the record was made in the case at Bar every policyholder of the Iowa group had come under the jurisdiction of the Michigan court either by accepting the reinsurance provided by that court or by filing claims in that court. This action was instituted by a complaint filed January 2, 1940

and the decree (197) of the District Court, was filed on June 24, 1940. The effort of the plaintiff to make it appear that he speaks for and on behalf of certain policyholders of the Iowa Company is subject solely to the condition existing as shown by the record. It appears that any question concerning the rights of the Iowa policyholders at the time when the record was made did not involve policyholders of the Iowa Company and is a moot question, no longer subject to any requirement of consideration by the court. *United States vs. Hamburg Amerikanische Packet Co.*, 239 U. S. 466; 36 Sp. Ct. Rep. 212; 60 L. Ed. 387.

(c) With the reinsurance of the Iowa Company in 1921-22-23, which reinsurance was carried into effect pursuant to the laws of Iowa providing for the reinsurance of a domestic company under which laws the assets of the company could be used for the purchase of reinsurance, all of the insurance and the assets of the company were transferred to the Michigan company which thereafter became the sole insurer and the Iowa company ceased for all purposes to exist and was duly dissolved. The Michigan company was at no time a domestic company but on the contrary was at all times a foreign company subject to the laws of Iowa affecting foreign companies. Although a certain contractual obligation was assumed relative to a deposit in the state of Iowa that contractual obligation was affected by a foreign life insurance company and cannot be tested by any law affecting a domestic life insurance company. The assets in issue constituted a contractual deposit and not a statutory deposit. A recognition of the facts as they exist makes evident therefore that the Michigan company could in no sense be considered as substituted for the Iowa company and by the same token the domestic company's statutes could not apply to a foreign company. The court therefore appears clearly to have been in error in holding that the Michigan company was substituted under the Iowa domestic life insurance company statutes for a dissolved Iowa company in the performance of the reinsurance obligations of the Iowa company. The domes-

tic company statute was referred to in the contract for the sole purpose of determining the amount and the character of the contractual deposit.

(d) Under the laws of the State of Michigan a Receiver succeeded to all the rights and powers of an insurance company.

(e) The Circuit Court of Appeals was in error in failing to recognize that under the laws of Michigan the Receiver succeeded to all of the rights of the Michigan Company.

The proceedings under the Michigan statute were instituted on April 12, 1938, some 60 days prior to initiation of any proceedings in Iowa, and in regular course the Commissioner of Insurance of the State of Michigan was appointed statutory receiver and by operation of the statute all assets of the American Life Insurance Company, including the Iowa deposit, vested in him. With the filing of the case the jurisdiction of the Michigan Court attached and thereafter the Michigan Court, or its Receiver, was charged with the full responsibility of handling the affairs of the Michigan Company as stated by this Court in *Relf v. Rundle*, 103 U. S. 222, "By the character of this Corporation, if a dissolution was decreed, its property passed by operation of law to the Superintendent of the Insurance Department of the State, and he was charged with the duty of winding up its affairs."

The record discloses that title to all of the property was vested in the Michigan Company despite the fact that the physical possession or custody of some of the property was from time to time in others. Upon dissolution of the Company by receivership the Michigan law recognizes that the Commissioner became a statutory receiver in the same manner as in *Clarke v. Williard*. The domiciliary receiver became empowered to liquidate those assets and to him, and to him alone, all policyholders must look for a determination of their rights, including those

policyholders originally in the Iowa company. The rule is well stated by this Court as follows:

> "Where a court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other courts. (Citing cases). Possession of the res disables other courts of coordinate jurisdiction from exercising any power over it. (Citing cases). The court which first acquired jurisdiction through possession of the property is vested, while it holds possession, with the power to hear and determine all controversies relating thereto. It has the right, while continuing to exercise its prior jurisdiction, to determine for itself how far it will permit any other court to interfere with such possession and jurisdiction. (Citing cases)."
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> *Lion Bonding and Surety Co. v. Karatz*, 262 U. S. 77, 78; 67 L. Ed. 871, 880.

The Federal Courts have always recognized that the receivership of a life insurance company should be the particular concern of the Court by reason of the widely distributed interests of many persons, each of whom represents but a very small portion of the total assets but that small portion of great importance to the individual holder. That thought has been well expressed as follows:

> "Experience has demonstrated that, in order to secure an economical, efficient, and orderly liquidation and distribution of the assets of an insolvent corporation for the benefit of all creditors and stockholders, it is essential that the title, custody, and control of the assets be intrusted to a single management under the supervision of one court. Hence, other courts, except when called upon by the court of primary jurisdiction for assistance, are excluded from participation. This should be particularly true as to proceedings for the liquidation of insolvent

insurance companies for the reasons adverted to by Mr. Justice Cardozo in Clark v. Williard, 292 U. S. 112, 123, 54 S. Ct. 615, 620, 78 L. Ed. 1160."

Motlow v. Southern Holding & Securities Corporation, 95 Fed. (2d) 721.

Carrying the same idea further and with appreciation of the confidence properly placed in the integrity of the courts the recent expression of a trial court in support of this theory is:

"A court of competent jurisdiction has taken over the Federal Reserve Life Insurance Company. It becomes the duty of the court to direct the collection by its receiver of all the assets of the company so that same can be equitably and properly applied to the discharge of the obligations of said company. The court alone is capable of determining what priorities, preferences, and liens may be allowed and enforced against said assets. The responsibility of the superintendent of insurance as an executive officer is completely discharged when a court, whose duty it is to administer the estate, calls for a surrender and delivery of said assets. 32 C. J. Sec. 12, p. 98.

"The superintendent of insurance cannot properly disregard the demands of a court in the regular routine administration of an estate. Granted that such securities are impressed with a lien, the court must be trusted to hold a disposition to enforce such liens. It is unimportant that a reinsurance may have been effected in another company under the direction of the court. The chancellor must have a free hand to direct the conversion or sequestration of assets for the protection of any class of creditors."

Holloway v. Federal Reserve Life Insurance Co., 21 Fed. Sup. 516.

It is, therefore, the position of petitioners that since the state of Michigan has a comprehensive method for winding up the affairs of a Michigan Insurance Company no Court, State or Federal, in any other jurisdiction can interfere with the liquidation of the assets of a Michigan insolvent company no matter where such assets may be located and it is further contended by petitioner that under the jurisdiction of the Michigan Court the rights of all policyholders, including those of the Iowa group were recognized and given full force and effect. As has been emphasized heretofore, all of the policyholders have accepted that jurisdiction and in view of the fact that the average age of all the policyholders is in excess of 60 years (Record page 166) it follows that it would be difficult, if not impossible, for those policyholders to secure other insurance. Consequently, their rights are most adequately protected by including them in the larger group where, under good insurance practice, the risk involved is spread over a large number, thereby giving to the comparatively small group of Iowa policyholders benefits impossible of attainment if considered alone.

Under the Michigan law the domiciliary receiver succeeded to all of the rights and powers of the insolvent company and in failing to recognize that principle, as applied to the interests of the policyholders, as set out herein, the Circuit Court of Appeals not only seriously harmed the policyholders affected by its decision but failed to recognize well established principles of law.

III.

The Decision of the Circuit Court of Appeals Was Such a Departure from the Accepted and Usual Course of Judicial Proceedings As to Call for An Exercise of This Court's Power of Supervision.

(a)

The Circuit Court of Appeals in its opinion failed to recognize established principles of the rights of domiciliary receivers of life insurance companies. We have

pointed out above the manner in which the Circuit Court of Appeals misconstrued the local policy of the State of Iowa. In finding that the Michigan receiver as domiciliary receiver had no rights whatsoever in the contractual deposit in the State of Iowa, it refuted and overruled the case of *Relf v. Rundle,* 103 U. S. 222, 26 L. Ed. 337.

The decision denies full faith and credit to the statute of the State of Michigan, Section 12266, C. L. Michigan, 1929, whereby the domiciliary receiver was vested by operation of law with title to all of the assets of the American Life Insurance Company. In the case of *Clarke vs. Williard,* 292 U. S. 112, 78 L. Ed. 1160, the Montana Supreme Court denied full faith and credit to the statutes and judicial proceedings of Iowa in holding that the petitioner was a receiver deriving title through a judicial proceedings and thereby denying to the petitioner title to assets in Montana. This Court held in that case that the Supreme Court of Montana had in violation of the Federal Constitution denied full faith and credit to the statutes and judicial proceedings of Iowa. In the case at bar the decision of the Circuit Court of Appeals just as effectively denies full faith and credit to the Michigan statute and to proceedings in the Michigan courts involving this receivership, as did the Montana court in the *Williard* case. Assets of life insurance companies are necessarily scattered throughout the many states. It is only by such principles as are laid down in *Relf v. Rundle, supra,* and *Clark v. Williard, supra,* that the assets of an insolvent life insurance company may be administered by the domiciliary receiver or its grantee or vendee in accordance with efficient, economical and orderly liquidation. The denial of those principles by the Circuit Court of Appeals is such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

(b)

By Paragraph 36 of their respective counter-claims the receiver of the American Life Insurance Company and the American United Life Insurance Company prayed for

the delivery of all of the assets on deposit in Iowa to the domiciliary receiver for such distribution and reorganization as might be decreed by the Circuit Court for the County of Ingham in Chancery of the State of Michigan, subject only to the local policy of a particular state and of the administration of such assets by the Ingham County Court pursuant to such policy, if any, of the State of Iowa. The Circuit Court of Appeals failed to give any consideration to that prayer.

This Court in *Relf v. Rundle,* 103 U. S. 222, 26 Law Ed. 337, held that the title to assets of an insolvent life insurance company passed to the domiciliary receiver as a consequence of a succession established for the corporation by the law of its creation. A limitation was placed upon this doctrine in the case of *Clark v. Williard,* 292 U. S. 112, 78 L. Ed. 1160, to the extent that if it was the local policy of a state expressed in statute or decision whereby judgments and attachments have a preference over the title of a charter liquidator, title of the domiciliary receiver to local assets was subject to the claims of local creditors. After the State of Montana through its Supreme Court had held that the local policy of the State permitted attachments and executions against insolvent corporations, foreign and domestic, and that such rule would prevail against a statutory successor clothed with title to the assets, *Clark v. Williard* again came before this Court in 294 U. S. 212, 79 L. Ed. 865. It was then held that in recognition of the newly expressed local policy of the State of Montana the title of the foreign liquidator was recognized but there was imposed upon such ownership the liens of judgments and executions in conformity with local law. The Circuit Court of Appeals failed to recognize that the *Clark v. Williard* cases laid limitations upon the title to the local assets within the State only and had no application to assets without the State. In so doing it departed from the accepted and usual course of judicial proceedings.

(c)

The Circuit Court of Appeals in its opinion found that the securities deposited in the State of Iowa were depos-

ited in trust for the sole benefit of the policyholders originating in the Iowa company. There was no testimony in the record to that effect. The contracts were in evidence, and it is only from them that any assumption could be made as to the purpose of the deposit. The most that could be assumed from the contracts themselves was that a reference was made to the domestic life insurance company statute of Iowa for the purpose of measuring the character and amount of the securities to be deposited with the Iowa Commissioner under a contractual relationship. This contractual deposit consisted of personal property. To establish a trust of personal property the evidence must be clear and convincing, not doubtful, uncertain and contradictory. *Allen v. Withrow*, 110 U. S. 119, 28 L. Ed. 90. Such a finding was likewise a departure from the accepted and usual course of judicial proceedings.

(d)

The Circuit Court of Appeals departed from the record when it stated, "The Michigan Receiver and the Indiana Company contend that *many* of the policyholders of the old Iowa Company have lost their rights to the benefits of the Iowa deposit by the filing of claims in the Michigan receivership or by the acceptance of the reinsurance agreement made with the Indiana Company". It is not the contention of the Michigan Receiver and the Indiana Company that *many of the policyholders* of the old Iowa Company have lost their rights to the benefit of the Iowa deposit by the filing of claims in the Michigan receivership or by the acceptance of the reinsurance agreement, but on the contrary it is the contention, as stipulated in the record (Paragraph 18), that *all* of the policyholders have so accepted the jurisdiction of the Michigan Court and that the Iowa receiver in attempting to speak for certain policyholders who have so accepted the jurisdiction of another court is a mere volunteer who, if successful in his endeavor, would be powerless to effect any benefit for any person, all of whom have accepted by their own act the jurisdiction of another court fully qualified to recognize their rights, whatever they may be,

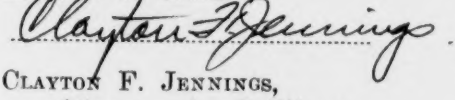
and grant any preferential treatment that either statutes or contracts may authorize. The Circuit Court of Appeals should have adhered to the record which showed that all of the policyholders had made an election, and that since those policyholders were the only persons who could assert any claim in the deposit, that there was nothing over which the Iowa Court could take jurisdiction. *Lovell v. St. Louis Mut. Life Ins. Co., et al.*, 111 U. S. 264, 28 L. Ed. 423; *Larsen v. Pac. Mut. Life Ins. Co.*, 373 Ill. 614, 27 N. E. 458; *Phipps, et al. v. Chicago, R. I. & P. R. R. Co.*, 284 Fed. 945. Therefore the question as to the right of the Iowa Commissioner in his facilitating capacity as receiver or the Iowa Court to the assets in question has become moot. *Commercial Cable Co. vs. Burleson*, 250 U. S. 360; 30 Sup. Ct. Rep. 512; 63 L. Ed. 1030.

CONCLUSION

We believe that in the foregoing brief we have raised questions which entitle this case to a review by this Court. We believe that the decision of the Eighth Circuit Court of Appeals throws the present receivership into a chaotic condition. The questions involved go to the rights of citizens of 41 different states. It is essential in preserving the rights of those citizens that the domiciliary receiver have a clear cut declaration as to his rights and duties in the same manner that this Court made such a declaration of rights and duties in the case of *Relf v. Rundle.*

Respectfully submitted,

EDMUND C. SHIELDS,



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